IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2899 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

GHANSHYAM D SADHU

Appearance:

MS BHAVIKA KOTECHA FOR MR YOGESH S LAKHANI
for Petitioner No. 1
MR GK RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 05/07/2004

ORAL JUDGEMENT

1 This petition has been preferred under Article 227 of the Constitution of India challenging the judgment

and award passed by the Industrial Tribunal, Baroda rendered in Ref.(IT) No.117 of 1988 on 30/4/1993.

2 The respondent was appointed as Part-time Traffic Controller with effect from 1/3/1966 and it is an admitted position that till date of award the respondent has been working as Part-time Traffic Controller. It appears that though the declared timings of service were from 7.00 a.m.to 11.00 a.m.as the respondent was required to work more than six hours per day the union of the workmen, on behalf of the respondent, raised industrial dispute and by order dated 5/4/1988 the Deputy Labour Commissioner made reference to Industrial Tribunal. The question posed by the referring authority to the Tribunal was as to whether the respondent should be considered to be Full time Traffic Controller from the date of his appointment in light of the fact that the respondent was asked to serve for full time at Zalod Control Point of Dahod Depot? And whether he should be entitled to all benefits from the date of appointment? The Tribunal has for the reasons stated in its impugned judgment and award dated 30/4/1993 accepted the plea of the respondent that he is entitled to be absorbed as a Full time Traffic Controller and so far as the benefits are concerned the award states that the respondent should be granted benefits from the date of the award.

3 Ms.Bhavika Kotecha for Mr.Y.S.Lakhani on behalf of the petitioner submitted that the petitioner Corporation was not taking service from the respondent for more than four hours at any point of time and that as could be seen from various divisional establishment orders placed at Annexure 'D' and circular at Annexure 'E' the petitioner corporation had clearly stated in the establishment order that the working hours for the respondent were fixed at four hours only. The learned Advocate therefore contended that the Tribunal had committed an error in accepting the stand of the respondent that the respondent was asked to serve for more than four hours. The learned Advocate also submitted that at Zalod Control Point one Shri R.C.Panchal was already appointed and was working as Full time Traffic Controller and therefore, there was no occasion for the petitioner corporation to take work from the respondent for a period of more than four hours. In the circumstances, it was submitted that the impugned order of the Tribunal be quashed and set aside.

4 There is no appearance on behalf of the respondent.

5 As can be seen from the impugned judgment of the Tribunal the respondent was examined and the statement has been exhibited at Exh.7. The Tribunal has taken note of the fact that the respondent in his Examination-in-Chief has stated that Full time Controller viz.R.C.Panchal resides at Limbdi and commutes daily from Limbdi to Zalod. That though duty hours of Full time Traffic Controller are from 11.00 a.m. to 7.45 p.m. Mr.Panchal reports late due to the fact that he commutes daily from his place of residence to the place of duty and as such the respondent is required to effectively work for more than six hours daily. The respondent has further stated that he reports for work at 7.00 a.m. and is required to serve the petitioner corporation daily upto 1.30.p.m. or 2.00 p.m. The Tribunal has recorded that the aforesaid statement made by the respondent workman has not been challenged in cross-examination. The Tribunal has further found that vide Exh.8 the petitioner corporation has tendered a pursish to the effect that the petitioner corporation does not wish to produce any evidence. The Tribunal has taken note of the statement made by the respondent workman that since 1970 in Godhra division the post of Full time Traffic Controller has not been filled up and though the respondent has made applications from time to time the same have been rejected without assigning any reasons.

In the circumstances, the Tribunal has come to the conclusion that as the respondent workman is carrying out duties of Full time Traffic Controller he is entitled to be appointed as Full time Traffic Controller and absorbed as such by the petitioner corporation. The Tribunal has further declared that such appointment and absorption shall be from the date of the award.

6 Having gone through the impugned judgment and award of the Tribunal it is apparent that the petitioner Corporation has not been able to dislodge the case made out by the respondent before the Tribunal. The position in law is well settled that in a petition under Article 227 of the Constitution of India the Court is required to go into the limited question whether the Tribunal has exercised the jurisdiction vested in it in accordance with law, or whether it has refused to exercise jurisdiction vested in it. The present case does not fall within either of the situations. It is equally well settled that the High Court in its extraordinary prerogative jurisdiction under Article 227 of the Constitution of India is not permitted to enter into reappreciation of evidence. In the circumstances, there

being no jurisdictional error in the impugned judgment and award of the Tribunal no case is made out for any interference. The petition is accordingly rejected. Rule is discharged. The interim relief made in terms of order dated 9/12/1994 shall continue to operate.

(D.A.Mehta, J)

m.m.bhatt